

Proposed New-Build Homes (Buyer Protection) (Scotland) Bill

Introduction

A proposal for a Bill to establish standard missives for the sale of new-build homes, including redress for purchasers in respect of defects in construction. The consultation runs from 5 April 2019 to 27 June 2019. All those wishing to respond to the consultation are strongly encouraged to enter their responses electronically through this survey. This makes collation of responses much simpler and quicker. However, the option also exists of sending in a separate response (in hard copy or by other electronic means such as e-mail), and details of how to do so are included in the member's consultation document. Questions marked with an asterisk (*) require an answer. All responses must include a name and contact details. Names will only be published if you give us permission, and contact details are never published – but we may use them to contact you if there is a query about your response. If you do not include a name and/or contact details, we may have to disregard your response. Please note that you must complete the survey in order for your response to be accepted. If you don't wish to complete the survey in a single session, you can choose "Save and Continue later" at any point. Whilst you have the option to skip particular questions, you must continue to the end of the survey and press "Submit" to have your response fully recorded. Please ensure you have read the consultation document before responding to any of the questions that follow. In particular, you should read the information contained in the document about how your response will be handled. The consultation document is available here: [Consultation document](#) [Privacy Notice](#)

I confirm that I have read and understood the Privacy Notice attached to this consultation which explains how my personal data will be used

About you

Please choose whether you are responding as an individual or on behalf of an organisation. Note: If you choose "individual" and consent to have the response published, it will appear under your own name. If you choose "on behalf of an organisation" and consent to have the response published, it will be published under the organisation's name.

an individual

Which of the following best describes you? (If you are a professional or academic, but not in a subject relevant to the consultation, please choose "Member of the public".)

Professional with experience in a relevant subject

Optional: You may wish to explain briefly what expertise or experience you have that is relevant to the subject-matter of the consultation:

I am a residential property solicitor

Please select the category which best describes your organisation

No Response

Please choose one of the following:

I am content for this response to be published and attributed to me or my organisation

Please provide your name or the name of your organisation. (Note: the name will not be published if you have asked for the response to be anonymous or "not for publication". Otherwise this is the name that will be published with your response).

Brian Smith

Please provide details of a way in which we can contact you if there are queries regarding your response. Email is preferred but you can also provide a postal address or phone number. We will not publish these details.

Aim and Approach

Q1. Which of the following best expresses your view of establishing statutory standardised clauses for builders' missives?

Partially supportive

Please explain the reasons for your response.

I believe that the issues raised do need to be addressed but I do not think that the proposed use of private contractual provisions is the best or the most appropriate way to deal with the issues involved

Q2. Which of the following best expresses your view of providing a statutory route for home buyers to obtain redress for major failings on new-build property?

Fully supportive

Q3. What do you think would be the main practical advantages and disadvantages of the proposed Bill?

I don't fully understand the proposal to legislate to require terms to be included in a contract (which potentially involves additional work and therefore cost for solicitors checking each time the terms have been included) when the terms could be deemed to be imported in each case or, simpler still, simply free standing legal obligations incumbent upon a builder with no further need for them to be brought into a contract.

Q4. What length of time do you think is most appropriate for a builder's warranty for a new-build home?

2 years

Q4. What length of time do you think is most appropriate for a builder's warranty for a new-build home?

Please explain the reasons for your response.

As with warrant provider cover I think this varies depending upon whether the faults are structural or not, latent or not and due to poor workmanship or not.

Q5. Which of the following best describes your view of having standard missives that provide a right for buyers to carry out a full survey of the property within a specified period, and a right to pull out of the purchase if severe or very serious defects are discovered?

Neutral (neither agree nor oppose)

Please explain the reasons for your response

The difficulties with these proposals are. 1 Timing. the property would only be "finished" and ready for inspection a very short time before the due entry date. Buyers are unlikely to exercise a right to pull out then and leave themselves homeless with only a short period until the sale of their existing house has to go through. I don't think many would pull out in practice. 2 The difficulties of defining "sever or very serious defects". That point is likely to raise disputes which could not be resolved in the short period of time available and the builder is likely to have better resources to defend than the house buyer is to pursue. 3 Risk. A buyer is not likely to want to risk a subsequent finding that the defects in question did not meet the required standard and could be faced with a claim for breach of contract by the builder with the damages which would flow from that.

Q6. If you have bought a new-build home in the past, please tell me about your experience, taking care not to name individuals/companies or the location of the property/development.

No Response

Financial Implications

Q7. Taking account of both costs and potential savings, what financial impact would you expect the proposed Bill to have on:

	Significant increase in cost	Some increase in cost	Broadly cost-neutral	Some reduction in cost	Significant reduction in cost	Unsure
Government and the public sector			X			
Businesses (including housebuilders)	X					
Individuals (including new-build house buyers)	X					

Please explain the reasons for your response.

There is no doubt that the costs of surveys and additional legal fees to deal with disputes will increase in cases of dispute. I feel that the "public sector" should be involved in this by means of an Ombudsman

Q7. Taking account of both costs and potential savings, what financial impact would you expect the proposed Bill to have on:

Scheme which could investigate and adjudicate on disputes arising with power to order repairs and even buy-back in appropriate cases.

Equalities

Q8. What overall impact is the proposed Bill likely to have on equality, taking account of the following protected characteristics (under the Equality Act 2010): age, disability, gender re-assignment, maternity and pregnancy, marriage and civil partnership, race, religion or belief, sex, sexual orientation?

Neutral (neither positive nor negative)

Sustainability

Q9. Do you consider that the proposed Bill can be delivered sustainably, i.e. without having likely future disproportionate economic, social and/or environmental impacts?

Unsure

General

Q10. Do you have any other comments or suggestions on the proposal?

The laudable aims of this bill should be implemented by a statutory regime imposing build quality obligations on builder supported by an Ombudsman Scheme do investigate and adjudicate on disputes and with power to order builders to rectify or buy-back in the extreme.